

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

USDC Docket Number : 04-cv-12546

Thomas Cook, et al

v.

Donald H. Rumsfeld, et al

CLERK'S CERTIFICATE

I, Sarah A. Thornton, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents numbered:

1- 39

and contained in Volume(s) I are the original or electronically filed pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 6/21/2006.

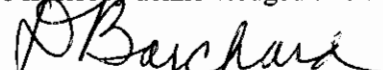
In testimony whereof, I hereunto set my hand and affix the seal of this Court on September 8, 2006.

Sarah A Thornton, Clerk of Court

By: 

Deputy Clerk

Receipt of the documents in the above entitled case is hereby acknowledged this date: 9/11/06


Deputy Clerk, US Court of Appeals

Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: _____

APPEAL

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:04-cv-12546-GAO**

Cook et al v. Rumsfeld et al
Assigned to: Judge George A. O'Toole, Jr
Cause: 28:1983 Civil Rights

Date Filed: 12/06/2004
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Thomas Cook

represented by **Jonathan A. Shapiro**
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Plaintiff

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V.

Defendant

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Secretary of Defense

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Secretary of Homeland Security

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Defendant

United States of America

represented by **Mark T. Quinlivan**
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Defendant

Michael Chertoff
*Secretary of Department of Homeland
Security*

represented by **Mark T. Quinlivan**
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Date Filed	#	Docket Text

12/06/2004	<u>1</u>	COMPLAINT against Tom Ridge, Donald H. Rumsfeld Filing fee: \$ 150, receipt number 60546, filed by Thomas Cook, Megan Dresch, Laura Galaburda, Jack Glover, David Hall, Monica Hill, Jenny Lynn Kopfstein, Jennifer McGinn, Justin Peacock, James E. Pietrangelo II, Derek Sparks, Stacy Vasquez. (Attachments: # 1 Part two of complaint)(Edge, Eugenia) (Entered: 12/08/2004)
12/06/2004		If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Alexander. (Edge, Eugenia) (Entered: 12/08/2004)
12/06/2004		Summons Issued as to Tom Ridge, Donald H. Rumsfeld. (Edge, Eugenia) (Entered: 12/08/2004)
12/06/2004		Summons Issued as to United States of America. (Edge, Eugenia) (Entered: 12/09/2004)
12/07/2004	<u>2</u>	MOTION for Leave to Appear Pro Hac Vice by Josh Goldfoot and Stuart F. Delery Filing fee \$ 100.00, receipt number 60606. by Thomas Cook, Megan Dresch, Laura Galaburda, Jack Glover, David Hall, Monica Hill, Jenny Lynn Kopfstein, Jennifer McGinn, Justin Peacock, James E. Pietrangelo II, Derek Sparks, Stacy Vasquez. (Attachments: # 1 Certificate in Good Standing for Stuart Delery# 2 Motion to appear Pro Hac Vice for Josh Goldfoot# 3 Certificate of Good Standing for Josh Goldfoot)(Edge, Eugenia) (Entered: 12/08/2004)
12/08/2004		Judge George A. O'Toole Jr.: Electronic ORDER entered granting 2 Motion for Leave to Appear Pro Hac Vice Added Stuart F. Delery for Laura Galaburda; Jack Glover; David Hall; Monica Hill; Jenny Lynn Kopfstein; Jennifer McGinn; Justin Peacock; James E. Pietrangelo; Derek Sparks; Stacy Vasquez; Thomas Cook and Megan Dresch, Josh Goldfoot for Laura Galaburda; Jack Glover; David Hall; Monica Hill; Jenny Lynn Kopfstein; Jennifer McGinn; Justin Peacock; James E. Pietrangelo; Derek Sparks; Stacy Vasquez; Thomas Cook and Megan Dresch . cc/cl (Edge, Eugenia) (Entered: 12/08/2004)
01/11/2005	<u>3</u>	NOTICE of Appearance by Louis W. Tompros on behalf of all plaintiffs (Tompros, Louis) (Entered: 01/11/2005)
01/20/2005	<u>4</u>	SUMMONS Returned Executed United States of America served on 1/14/2005, answer due 2/3/2005. (Smith3, Dianne) (Entered: 01/21/2005)
01/20/2005	<u>5</u>	AFFIDAVIT OF SERVICE EXECUTED BY MAURA T. HEALEY.. Donald H. Rumsfeld served on 12/14/2004, answer due 1/3/2005; Tom Ridge served on 12/14/2004, answer due 1/3/2005.. (Smith3, Dianne) (Entered: 01/21/2005)
01/25/2005	<u>6</u>	NOTICE of Appearance by Mark T. Quinlivan on behalf of Donald H. Rumsfeld, Tom Ridge, United States of America (Quinlivan, Mark) (Entered: 01/25/2005)
02/03/2005	<u>7</u>	Consent MOTION for Leave to File Excess Pages by Donald H. Rumsfeld, Tom Ridge, United States of America. (Attachments: # 1 Text

		of Proposed Order)(Quinlivan, Mark) (Entered: 02/03/2005)
02/07/2005	<u>8</u>	MOTION to Dismiss by Donald H. Rumsfeld, Tom Ridge, United States of America.(Quinlivan, Mark) (Entered: 02/07/2005)
02/07/2005	<u>9</u>	MEMORANDUM in Support re <u>8</u> MOTION to Dismiss filed by Donald H. Rumsfeld, Tom Ridge, United States of America. (Attachments: # (1) Appendix Senate Report No. 112# (2) Appendix DoD Directive 1332.14# (3) Appendix DoD Instruction 1332.40)(Quinlivan, Mark) Additional attachment(s) added on 2/25/2005 (Smith3, Dianne). (Entered: 02/07/2005)
02/15/2005	<u>10</u>	Assented to MOTION for Extension of Time to March 28, 2005 to File Response/Reply as to <u>8</u> MOTION to Dismiss by David Hall, Monica Hill, Jenny Lynn Kopfstein, Jennifer McGinn, Justin Peacock, James E. Pietrangelo, II, Derek Sparks, Thomas Cook, Stacy Vasquez, Megan Dresch, Laura Galaburda, Jack Glover.(Tompros, Louis) (Entered: 02/15/2005)
02/17/2005	<u>7</u>	Judge George A. O'Toole Jr.: Electronic ORDER entered granting <u>7</u> Motion for Leave to File Excess Pages (Lyness, Paul) (Entered: 02/17/2005)
02/22/2005	<u>10</u>	Judge George A. O'Toole Jr.: Electronic ORDER entered granting <u>10</u> Motion for Extension of Time to File Response/Reply re <u>10</u> Assented to MOTION for Extension of Time to March 28, 2005 to File Response/Reply as to <u>8</u> MOTION to Dismiss (Edge, Eugenia) (Entered: 02/22/2005)
03/23/2005	<u>11</u>	NOTICE of Appearance by Matthew A. Stowe on behalf of David Hall, Monica Hill, Jenny Lynn Kopfstein, Jennifer McGinn, Justin Peacock, James E. Pietrangelo, II, Derek Sparks, Thomas Cook, Stacy Vasquez, Megan Dresch, Laura Galaburda, Jack Glover (Stowe, Matthew) (Entered: 03/23/2005)
03/28/2005	<u>12</u>	Opposition re <u>8</u> MOTION to Dismiss filed by David Hall, Monica Hill, Jenny Lynn Kopfstein, Jennifer McGinn, Justin Peacock, James E. Pietrangelo, II, Derek Sparks, Thomas Cook, Stacy Vasquez, Megan Dresch, Laura Galaburda, Jack Glover. (Stowe, Matthew) Additional attachment(s) added on 3/29/2005 (Edge, Eugenia). Additional attachment(s) added on 3/30/2005 (Edge, Eugenia). (Entered: 03/28/2005)
04/05/2005	<u>13</u>	MOTION for Leave to File <i>Reply Memorandum</i> by Michael Chertoff, Donald H. Rumsfeld, United States of America.(Quinlivan, Mark) (Entered: 04/05/2005)
04/06/2005	<u>13</u>	Judge George A. O'Toole Jr.: Electronic ORDER entered granting <u>13</u> Motion for Leave to File. (Edge, Eugenia) (Entered: 04/06/2005)
04/07/2005		E-Mail Notice re Granting of (#13) motion for leave to file. originally issued on April 6, 2005 returned as undeliverable. Name of Addressee: Mark Quinlivan. Called Mary, Mark Quinlivan's assistant, who gave me

		correct email address. Email address updated. Returned email forwarded to Atty. Quinlivan. (Edge, Eugenia) (Entered: 04/07/2005)
04/12/2005	<u>14</u>	REPLY to Response to Motion re <u>8</u> MOTION to Dismiss filed by Michael Chertoff, Donald H. Rumsfeld, United States of America. (Quinlivan, Mark) (Entered: 04/12/2005)
05/03/2005	<u>15</u>	Consent MOTION for Leave to File <i>Surreply in Opposition to Defendants' Motion to Dismiss</i> by David Hall, Monica Hill, Jenny Lynn Kopfstein, Jennifer McGinn, Justin Peacock, James E. Pietrangelo, II, Derek Sparks, Thomas Cook, Stacy Vasquez, Megan Dresch, Laura Galaburda, Jack Glover. (Attachments: # <u>1</u> Proposed Surreply)(Stowe, Matthew) (Entered: 05/03/2005)
05/11/2005		NOTICE of Hearing on Motion <u>8</u> MOTION to Dismiss: Motion Hearing set for 6/29/2005 02:00 PM in Courtroom 9 before Judge George A. O'Toole Jr.. Please mark your calendars accordingly.(Lyness, Paul) (Entered: 05/11/2005)
05/27/2005	<u>16</u>	Assented to MOTION to Continue <i>Hearing on Motion to Dismiss</i> by David Hall, Monica Hill, Jenny Lynn Kopfstein, Jennifer McGinn, Justin Peacock, James E. Pietrangelo, II, Derek Sparks, Thomas Cook, Stacy Vasquez, Megan Dresch, Laura Galaburda, Jack Glover.(Healey, Maura) Additional attachment(s) added on 5/31/2005 (Edge, Eugenia). (Entered: 05/27/2005)
05/31/2005		Judge George A. O'Toole Jr.: Electronic ORDER entered granting <u>15</u> Motion for Leave to File (Lyness, Paul) (Entered: 05/31/2005)
05/31/2005	<u>17</u>	SUR-REPLY to Motion re <u>8</u> MOTION to Dismiss filed by David Hall, Monica Hill, Jenny Lynn Kopfstein, Jennifer McGinn, Justin Peacock, James E. Pietrangelo, II, Derek Sparks, Thomas Cook, Stacy Vasquez, Megan Dresch, Laura Galaburda, Jack Glover. (Edge, Eugenia) (Entered: 05/31/2005)
06/03/2005		Judge George A. O'Toole Jr.: Electronic ORDER entered granting <u>16</u> Motion to Continue. The hearing date is now scheduled for Wednesday, July 6, 2005 at 2:00pm in Courtroom 9 on the 3rd floor. Please mark your calendars accordingly. (Lyness, Paul) (Entered: 06/03/2005)
06/13/2005		NOTICE OF RESCHEDULING Motion Hearing set for 7/8/2005 10:00 AM in Courtroom 9 before Judge George A. O'Toole Jr.. Please mark your calendars accordingly. (Lyness, Paul) (Entered: 06/13/2005)
06/28/2005	<u>18</u>	Consent MOTION for Leave to File <i>Notice of Recent Decisions</i> by Michael Chertoff, Donald H. Rumsfeld, United States of America. (Attachments: # <u>1</u> Notice of Recent Decisions# <u>2</u> Muth v. Frank, --- F.3d ---, 2005 WL 1463457 (7th Cir. June 22, 2005)# <u>3</u> Smelt v. County of Orange, --- F. Supp.2d ---, 2005 WL 1429918 (C.D. Cal. June 16, 2005)) (Quinlivan, Mark) (Entered: 06/28/2005)
07/01/2005	<u>19</u>	NOTICE by Michael Chertoff, Donald H. Rumsfeld, United States of America of <i>Errata (Missing Page)</i> (Attachments: # <u>1</u> Page 272 of Senate

		Report 112, 103d Congress, 1st Sess. (1993))(Quinlivan, Mark) (Entered: 07/01/2005)
07/08/2005	●	Electronic Clerk's Notes for proceedings held before Judge George A. O'Toole Jr.: Motion Hearing held on 7/8/2005 re <u>8</u> MOTION to Dismiss filed by United States of America,, Tom Ridge,, Donald H. Rumsfeld,. The court takes the matter under advisement. (Court Reporter Shelly Killian.) (Lyness, Paul) (Entered: 07/08/2005)
07/18/2005	20	TRANSCRIPT of Hearing on Motion to Dismiss held on July 8, 2005 before Judge O'Toole. Court Reporter: Shelly M. Killian. The original transcripts are maintained in the case file in the Clerk's Office. Copies may be obtained by contacting the court reporter at 617/737-7117 or the Clerk's Office. (Scalfani, Deborah) (Entered: 07/18/2005)
12/09/2005	21	Consent MOTION for Leave to File <i>Notice of Recent Decisions</i> by Michael Chertoff, Donald H. Rumsfeld, United States of America. (Attachments: # <u>1</u> Notice of Recent Decisions# <u>2</u> Loomis v. United States, --- Fed. Cl. ---, 2005 WL 2995372 (Fed. Cl. Nov. 7, 2005)# <u>3</u> State v. Limon, --- Kan. ---, 122 P.3d 22 (Kan. Oct. 21, 2005)) (Quinlivan, Mark) (Entered: 12/09/2005)
12/21/2005	22	RESPONSE to Motion re <u>21</u> Consent MOTION for Leave to File <i>Notice of Recent Decisions</i> filed by David Hall, Monica Hill, Jenny Lynn Kopfstein, Jennifer McGinn, Justin Peacock, James E. Pietrangelo, II, Thomas Cook, Stacy Vasquez, Megan Dresch, Laura Galaburda, Jack Glover. (Stowe, Matthew) (Entered: 12/21/2005)
01/30/2006	●	Judge George A. O'Toole Jr.: Electronic ORDER entered granting Nunc Pro tunc <u>18</u> Motion for Leave to File, granting Nunc Pro Tunc <u>21</u> Motion for Leave to File (Lyness, Paul) (Entered: 01/30/2006)
02/01/2006	23	NOTICE by Michael Chertoff, Donald H. Rumsfeld, United States of America <i>of Recent Decisions</i> (Attachments: # <u>1</u> Muth v. Frank, 412 F.3d 808 (7th Cir. 2005), cert. denied, 126 S. Ct. 575 (2005)# <u>2</u> Smelt v. County of Orange, 374 F. Supp.2d 861 (C.D. Cal. 2005))(Quinlivan, Mark) (Entered: 02/01/2006)
02/01/2006	24	NOTICE by Michael Chertoff, Donald H. Rumsfeld, United States of America <i>of Recent Decisions</i> (Attachments: # <u>1</u> Loomis v. United States, 68 Fed. Cl. 503 (2005)# <u>2</u> State v. Limon, 280 Kan. 275, 122 P.3d 22 (2005))(Quinlivan, Mark) (Entered: 02/01/2006)
04/24/2006	25	Judge George A. O'Toole Jr.: Electronic ORDER entered. MEMORANDUM AND ORDER. "...As a matter of law, the plaintiffs' complaint fails to state a claim upon which relief can be granted. Therefore, the defendants' motion to dismiss the complaint is ALLOWED and the complaint is DISMISSED. A judgment of dismissal with prejudice shall enter accordingly." It is SO ORDERED. Motions terminated: <u>8</u> MOTION to Dismiss filed by United States of America,, Tom Ridge,, Donald H. Rumsfeld,.(Edge, Eugenia) (Entered: 04/24/2006)

04/24/2006	<u>26</u>	Judge George A. O'Toole Jr.: ORDER entered. JUDGMENT in favor of Defendants against Plaintiffs(Lyness, Paul) (Entered: 04/24/2006)
05/04/2006	<u>27</u>	NOTICE of Pro Se Appearance by James E. Pietrangelo, II. c/s (Edge, Eugenia) (Entered: 05/04/2006)
05/04/2006	<u>28</u>	MOTION for Reconsideration re <u>26</u> Judgment by James E. Pietrangelo, II. aff of service attached. (Edge, Eugenia) (Entered: 05/04/2006)
05/04/2006	<u>29</u>	NOTICE of Withdrawal of Appearance by Matthew A. Stowe <i>and Other Plaintiffs' Counsel</i> (Stowe, Matthew) (Entered: 05/04/2006)
05/04/2006	<u>30</u>	NOTICE of Change of Address by Matthew A. Stowe (Stowe, Matthew) (Entered: 05/04/2006)
05/18/2006	<u>31</u>	MEMORANDUM in Opposition re <u>28</u> MOTION for Reconsideration re <u>26</u> Judgment filed by Michael Chertoff, Donald H. Rumsfeld, United States of America. (Quinlivan, Mark) (Entered: 05/18/2006)
05/30/2006	<u>32</u>	MOTION for Leave to File <i>Memorandum to Address Defendants' Opposition to James Pietrangelo's Motion for Reconsideration</i> by David Hall, Monica Hill, Jenny Lynn Kopfstein, Jennifer McGinn, Justin Peacock, Derek Sparks, Thomas Cook, Stacy Vasquez, Megan Dresch, Laura Galaburda, Jack Glover.(Stowe, Matthew) (Entered: 05/30/2006)
05/30/2006	<u>33</u>	RESPONSE to Motion re <u>32</u> MOTION for Leave to File <i>Memorandum to Address Defendants' Opposition to James Pietrangelo's Motion for Reconsideration</i> , <u>28</u> MOTION for Reconsideration re <u>26</u> Judgment filed by David Hall, Monica Hill, Jenny Lynn Kopfstein, Jennifer McGinn, Justin Peacock, Derek Sparks, Thomas Cook, Stacy Vasquez, Megan Dresch, Laura Galaburda, Jack Glover. (Stowe, Matthew) (Entered: 05/30/2006)
06/01/2006	<u>34</u>	Consented to MOTION for Leave to File by James E. Pietrangelo, II. c/s (Attachments: # <u>1</u> Exhibit Reply to Opposition)(Edge, Eugenia) (Entered: 06/05/2006)
06/01/2006	<u>38</u>	REPLY to Defendants' Opposition to Plaintiff's Motion for Reconsideration re <u>34</u> MOTION for Leave to File filed by James E. Pietrangelo, II. (Lyness, Paul) (Entered: 08/30/2006)
06/07/2006		Judge George A. O'Toole Jr.: Electronic ORDER entered granting <u>32</u> Motion for Leave to File; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures, granting <u>34</u> Motion for Leave to File; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures (Lyness, Paul) (Entered: 06/07/2006)
06/21/2006	<u>35</u>	NOTICE OF APPEAL as to <u>25</u> Memorandum & ORDER,,, Terminate Motions,,, <u>26</u> Judgment by David Hall, Monica Hill, Jenny Lynn Kopfstein, Jennifer McGinn, Justin Peacock, Derek Sparks, Thomas Cook, Stacy Vasquez, Megan Dresch, Laura Galaburda, Jack Glover. \$

		455 NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov/clerks/transcript.htm MUST be completed and submitted to the Court of Appeals. Appeal Record due by 7/11/2006. (Tompros, Louis) (Entered: 06/21/2006)
06/22/2006	<u>36</u>	<i>Amended</i> Subsequent NOTICE OF APPEAL as to <u>25</u> Memorandum & ORDER,,, Terminate Motions,,, <u>26</u> Judgment by David Hall, Monica Hill, Jenny Lynn Kopfstein, Jennifer McGinn, Justin Peacock, Derek Sparks, Thomas Cook, Stacy Vasquez, Megan Dresch, Laura Galaburda, Jack Glover. Filing fee \$ 455. Appeal Record due by 7/12/2006. (Tompros, Louis) (Entered: 06/22/2006)
06/27/2006	<u>37</u>	AFFIDAVIT in Support re <u>28</u> MOTION for Reconsideration re <u>26</u> Judgment. (Edge, Eugenia) Additional attachment(s) added on 6/29/2006 (Edge, Eugenia). (Entered: 06/28/2006)
06/29/2006	●	Filing fee: \$ 455, receipt number 73422 for <u>35</u> Notice of Appeal,, (Edge, Eugenia) (Entered: 06/30/2006)
09/05/2006	<u>39</u>	Judge George A. O'Toole Jr.: ORDER entered. MEMORANDUM AND ORDER. "Thus, to the extent that Pietrangelo seeks to present new arguments that could have been made previously, relief under Rule 59(e) is not warranted. To the extent that he seeks to make a better argument than that which was previously made on points that were raised (which he calls "reframing" the earlier arguments), he would have to show the judgment, made after consideration of purportedly deficient arguments, rested on a "manifest error of law or fact." He has not shown that. In the absence of such a showing, the remedy for an erroneous judgment is to be found in appellate review in the ordinary course. Accordingly, the motion is DENIED." cc/cl(Edge, Eugenia) (Entered: 09/06/2006)